

MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

July 20, 1978

TO: Donald Alexander, Deputy Attorney General

FROM: Philip Ahrens, Assistant Attorney General

It has come to my attention that L.L. Bean Inc., which offers Department of Environmental Protection ("Department") employees a 1/3 discount on mail order purchases for personal use, has filed an application for Site Location approval of an expansion of its warehousing and manufacturing facilities. Because there appears to be a possible violation of a section of the Maine Criminal Code, it is important that you are aware of the situation and of my actions and recommendations to date.

BACKGROUND

On April 3, 1973, David Leake (Chief, Division of Information and Education for the Department) asked L.L. Bean Inc. to extend its discount policy to Department employees. A copy of that letter is attached. L.L. Bean Inc. extended the discount as requested. On May 2, 1973, The Board of Environmental Protection ("Board") was informed by its Chairman that everyone employed at the Department, including the Board, had been offered a 33 1/3% discount by L.L. Bean Inc. The minutes of that meeting, the first 2 pages of which are attached, indicate that "The Chairman also told the Board that the Department has no dealings with this company and that no applications concerning this company will be received". The Board then voted to accept the discount.

Three months later, on August 6, 1973 L.L. Bean Inc. applied to the Board for Site Location approval for a \$1.2 million, 100,000 square-foot expansion of its

warehouse. Site approval was granted September 12, 1973. The discount offered by L.L. Bean Inc. was in effect during the pendency of the application. There was no mention in the Board minutes of the existence of the discount.

On November 28, 1977 a memorandum from David Leake (D.E.P. Chief of Information and Education) regarding "L.L. Bean Discount Policy" was circulated throughout the Department. A copy is attached. The memorandum is a revision of earlier memoranda (May 3, 1973; November 24, 1975) on the same subject.

On June 16, 1978, L.L. Bean Inc. applied to the Board for Site Location approval for a proposed \$4.5 million expansion of warehousing and manufacturing facilities. The application is being reviewed by Department staff and is scheduled to be considered by the Board at its regularly scheduled July 26, 1978 meeting.

17-A M.R.S.A. §605, and the Comment which follows it, read as follows:

§605. Improper gifts to public servants

1. A person is guilty of improper gifts to public servants if:

A. Being a public servant he solicits, accepts or agrees to accept any pecuniary benefit from a person who he knows is or is likely to become subject to or interested in any matter or action pending before or contemplated by himself or the governmental body with which he is affiliated; or

B. He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph A.

2. Improper gifts to public servants is a Class E crime.

Comment - 1975

This section supplements the bribery provisions which prohibit giving things to public servants with the wrong motive, by prohibiting such transactions when the thing given comes from the "wrong" source. It seems to be a warranted

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assumption that gifts from persons who have an interest in an official matter before the public servant would be so often made with the hope and intent of influencing him that it is appropriate to prohibit all such gifts generally. This prohibition also serves to contribute significantly to the appearance, as well as the substance, of public integrity.

Section 605, which became effective on May 1, 1976, is essentially a new section in the Criminal Code. Its broad language had no statutory precedent in effect during L.L. Bean, Inc.'s 1973 Site Location application, but its effective date is well before that company's 1978 Site Location Application.

ACTION AND RECOMMENDATIONS

I have discussed with Commissioner Warren the broad language of Section 605 and the attendant problems with the discount policy as offered by L.L. Bean Inc. Commissioner Warren has terminated the discount policy effective immediately.

Although the thrust of this memorandum indicates there may have been one or more violations of Section 605, I do not believe that any prosecution is warranted. The discount policy was established before the effective date of Section 605; the policy was in writing and its existence was well-known¹; there is no indication that any improper influence either resulted or was intended; and a satisfactory remedy - cancellation of the discount policy - is readily available.

¹Apparently a very large majority of Department employees have taken advantage of the discount. Also, a half-page article on the discount policy appeared in the Maine Times on June 25, 1976.

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The scope of this memorandum is limited to the discount policy offered by L.L. Bean Inc. to the Department. I understand that a similar discount policy has been extended by L.L. Bean Inc. to certain other state agencies but I am not aware if L.L. Bean Inc., in the language of Section 605, "is or is likely to become subject to or interested in any matter pending before" those agencies.¹

Because of the broad language of a relatively recent statute and because the problem may not have been confronted previously, I suggest that all state employees be made aware of the scope of Section 605.

I would be happy to discuss this matter further at your convenience.

cc: Henry Warren, Commissioner, D.E.P.
Cab Howard, Assistant Attorney General
Richard Cohen, Deputy Attorney General
Steve Diamond, Assistant Attorney General

¹The Department of Inland Fisheries and Wildlife, whose employees are also extended the discount by L.L. Bean Inc., is an agency from which comments are solicited on all Site Location applications, including the pending application by L.L. Bean Inc. See 38 M.R.S.A. Section 481.

STATE OF MAINE

Inter-Departmental Memorandum Date 28 November 1977

To All Full Time Permanent Employees

Dept. of Environmental Protection

From Dave Leake

Dept. _____

Subject L.L. Bean Discount Policy

L.L. Bean, Inc., Freeport, Maine extends a discount of 33 1/3 % off list to ALL FULL TIME PERMANENT EMPLOYEES (ONLY) of state agencies involved with the protection or enhancement of Maine's ecology.

The following provisions apply.

1. Only purchases for your personal use are authorized. Spouses and immediate family are not included.
2. Only purchases of L.L. Bean Catalog listings are authorized, with certain merchandise items excluded from discount or having special discount rates as follows:

NO DISCOUNT

Ammunition
Candy and Cigarettes
Sales and Sample Items, Special Priced Items
Randall Knives
Power Saws
Powered Ice Drills

DISCOUNT OF 10 %

Canoes
Rebuilding of Hunting Shoes
Woodburning Stoves
Barrel Stove Kits
Tents
Cross Country Ski Equipment
Cameras

3. All purchases must be made through the Department's Augusta Office. All purchases are to be accompanied by your personal check or a money order.
 - a) You should take proper discount when submitting your order to the Department office. Please make sure the address is to you personally and not to a third party.
 - b) Send your order to my office (Attention Janet Johnson). The Department will mail your order to L.L. Bean, Inc. Bean's will ship your order to you by Parcel Post or U.P.S.
4. A handling charge of \$1.25 is to be added to your order to defray shipping costs.
5. Discount purchases may not be made at the L.L. Bean, Inc. salesroom; however, you are welcome at the Freeport salesroom and may, of course, try on footwear and apparel to determine size or to examine merchandise for future discount purchase consideration.

This memorandum supersedes any other memorandum on L.L. Bean Discount Policy.